
Book Review

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Regionalism in International Investment Law
Edited by Leon E. Trakman and Nicola W. Ranieri
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Prof. Leon E. Trakman is a Doctoral Fellow at Harvard and holds both Masters and Doctorate degrees earned at the Harvard Law School. His academic appointments include: Distinguished Visiting Professor, University of California, Davis; Professor of Law, Dalhousie Law School; Visiting Professor, Wisconsin Law School; Visiting Professor of Law, University of Cape Town; Bora Laskin National Fellow in Human Rights, Canada, 1997/98; Killam Professor, Killam Foundation, Visiting Professor, Tulane Law School; Bolton Visiting Professor, Faculty of Law, McGill University. Trained as an international commercial arbitrator and mediator, Professor Trakman has served as presiding arbitrator or arbitrator in more than 120 international disputes and as mediated in over 30 disputes. These include disputes in contract law, sales, construction, IP, franchises, insurance, executive remuneration etc. He has also served extensively as an inter-governmental trade adjudicator, appointed by US, Canadian and Mexican Governments under North American Free Trade Agreement (NAFTA). Before then, he served as a Panelist, appointed by the US and Canadian Governments to resolve trade disputes under the US-Canada Free Trade Agreement.

The book titled *Regionalism in International Investment Law* provides a multinational perspective on international investment law. Here chapters provide a critical and comprehensive understanding of issues in a field which has grown exponentially in its importance particularly over the last decade, focusing on the European Union, Australia, North America, Asia, and China. The book approaches the field of foreign direct investment from both academic and practical viewpoints and analyses different bilateral, regional, and multinational agreements, often yielding competing perspectives. The academic perspective yields a strong conceptual foundation to often misunderstood elements of international investment law, while the practical perspective aids those actively pursuing foreign direct investment in better understanding the landscape, identifying potential conflicts which may arise, in more accurately assessing the risk underlying the issues in conflict and in resolving those issues. Thorny issues relating to global commerce, sovereignty, regulation, expropriation, dispute resolution, and investor protections are covered, depicting how they have developed and are applied in different

regions of the world. These different treatments ensure that readers are able to grasp the subject matter at multiple levels and provide a comprehensive overview of developments in the field of foreign direct investment.

This book represents a synthesis of texts composed by several law specialists, and mainly discusses the principles and practices used by states and foreign investors. It also assesses the international principles that govern foreign investment and explores investment practices. This book is divided into sixteen chapters which highlight the differences between investment treaties and how their application has influenced the practice of investors and states.

Chapter 1 begins with an explanation of the significance of foreign direct investments (FDIs) and its importance for foreign direct investors and host states. This chapter also looks at the value of FDIs and supports the notion that both the origin and the host country benefit.

Chapter 2 focuses on the historical development of FDIs. It all started in the Roman Empire, arbitration was used to settle disputes between the USA and Mexico after it was the Allied-German Tribunal that was created to settle disputes between the state and individuals which created a new global economic relationship after the World War II. Today, the right of citizens to assert claims of public interest has become increasingly important.

In Chapter 3 a methodological approach is applied towards international investment law. The author examines conceptual and systemic legal cultural issues and some of these issues are illustrated with examples. The chapter examines international investment law but doesn't analyse the legal culture of specific issues within domestic international investment regulation

In Chapter 4, Professor Trakman talks about the development of bilateral trade and investment agreements as measures of state action and, moreover, advancements in multilateral trade relations. Nevertheless, this chapter is divided into four sections. The first two sections talk about liberalisation of trade investment and reconciling multilateralism and bilateralism. The third section is about positional support for bilateral trade and investment and the last section is about the application of bilateral trade and investment agreements in the future.

In Chapter 5, the author talks about the North American Free Trade Agreement (NAFTA), the most modern and advanced free trade agreement. This chapter describes some of the NAFTA dispute resolution mechanisms. Some of these mechanisms will be dealt with also in Chapter 14. These mechanisms are also found in Chapter 11 (Dispute resolution for foreign investment issues), Chapter 19 (Different unfair commercials) and Chapter 20 (Interpretation and application of the NAFTA). These are analysed in different sections of this chapter.

Chapter 6 analyses the legal framework for foreign investment in the European Union and its member states. It is divided into four distinct sections. The first part talks about the EU freedoms, section two which itself is divided into several parts talks about The EU freedoms and foreign investors deal with the destiny of BIT's between member state and third countries and the last section deals with the level of protection that the EU stakeholders are envisaging for EU national investors abroad and foreign investors in the EU and its member state under future European agreements.

Chapter 7 talks about protecting investments in Latin America. Many Latin American countries have nationalised several sectors so that they no longer have to comply with certain international obligations through treaties, while these treaties offer investors legal certainty to maintain their investment. Failure to comply with these international treaties has many consequences.

In Chapter 8, Vivienne Bath, Professor of Chinese and international business law, examines the developments in international investment law and practice of the Association of Southeast Asian Nations (ASEAN). The aim of the association is predominately economic integration and transformation of ASEAN into a region of free movement of goods, services, investment, skilled labour and freer capital flows.

Chapter 9, entitled 'China and international investment law', analyses the role of law in China's international investment activities. We may not forget that China is the second country in the world to bring in foreign direct investments (FDI) and the fifth for the exports of these foreign investments and this is mostly thanks to the economic progress of the country and the strengthening of the legal framework (national and international). But although the regulatory framework has contributed to China's success in foreign investment, it must prepare for the change of role from a participant to a leader in international investment activities.

Chapter 10 assesses critiques about the International Centre for the Settlement of Investment Disputes (ICSID). First, it considers the perceived bias of the ICSID toward wealthy Western states and their investors as an ideological and normative proposition. Second, it evaluates the extent to which the processes of the ICSID incorporate this perceived bias into its institutional mechanisms. Third, it analyses whether ICSID arbitration is a viable solution. Fourth, it offers solutions to make ICSID more transparent as a settlement mechanism, and fifth, it seeks an alternative to arbitration and national courts in resolving investments disputes. This agreement can be the consequence that a case does not pass quickly to the condemnation of the ICSID arbitration. Even if several criticisms have been made, it is possible that the ICSID could be revised by the institutions in the absence of motivations.

Chapter 11 deals with indirect export. It will examine the formation of the tribunal and its competences as well as its functions, the compensation granted for indirect expropriations and the international sources on which they are based. The future role of the tribunal awards in investment law.

In Chapter 12 entitled 'Australia's rejection of investor-state arbitration' explains that Australia has decided to no longer accept the adoption of arbitration within the framework of its bilateral agreements and regional trade agreements (BRTAs). According to Australia, national courts are more suitable for resolving investment problems between national states and foreign investors. This chapter therefore analyses the consequences of resorting to national courts.

Chapter 13 talks about the new competence of the European Union in the field of foreign direct investments. The question which arises is to know the consequences for the Member States which have already concluded investment treaties. Because of this new jurisdiction, another question arises in the area of investor-state dispute settlement. The chapter analyses the questions of procedural status which must be considered.

Chapter 14 largely analyses NAFTA. In Chapter 15, the author analyses a case which took place on 27 June 2011 “Philip Morris Asia v. Australia”. Philip Morris Asia Limited has filed a complaint against the Australian government because a law for neutral cigarette packs has been passed. The Dispute degenerated into arbitration proceedings. This chapter will analyse the treaty based investor-state arbitration and the lessons learned from this case.

In the last chapter, an analysis of the four phases of the international law on foreign investment is made. In the second section of this chapter, the author explains why it is necessary to create a global regime for the protection of investments.

We recommend this book to anyone who wants to learn more about international finance and more specifically about international investments. This book covers a large number of subjects in international investment relations, thus we recommend the book to all practitioners and academics working in the field.